

Wm. Keith Dozier (OSB 012478)

keith@wkd-law.com

Wm. Keith Dozier, LLC

385 First St., Ste. 215

Lake Oswego, OR 97034

Telephone: (503) 594-0333

Fax: (510) 697-0841

Ben C. Martin (13052400 TX)

Laura J. Baughman (00791846 TX)

Kristi Wood (24076784 TX)

Thomas William Arbon (01284275 TX)

Martin | Baughman, PLLC

3710 Rawlins Street, Suite 1230

Dallas, Texas 75219

Telephone: (214) 761-6614

Facsimile: (214) 744-7590

bmartin@martinbaughman.com

lbaughman@martinbaughman.com

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

JUSTIN PETERSON

CASE NO. 3:19-CV- 01701-MO

Plaintiff,

v.

C.R. BARD, INC. and BARD PERIPHERAL
VASCULAR, INC.,

**PLAINTIFF'S RESPONSE TO
DEFENDANTS' MOTION FOR
RECONSIDERATION ON
ALLOCATION OF TIME AT
TRIAL (#178)**

Defendants.

Counsel for the parties have not conferred regarding the issue presented in the underlying Motion for Reconsideration, filed Sunday afternoon prior to the Monday continuation of the Pretrial Conference. Plaintiff, appreciating that everyone is burdened by the limits of time at this stage in the case, must be brief.

Respectfully, Plaintiff offers the following points and will rely on the Court's inherent discretion in determining the process and procedures to be adhered to at trial. Plaintiff will forego citing authority or making additional argument. This is done wholly in the interest of brevity and devoting needed time to other matters, not intending any disrespect to the Court, or any party.

Plaintiff again requests a 60-40 split of trial time for the following reasons:

1. Plaintiff has the burden of proof regarding the issues of liability and damages.
2. Defendant's affirmative defense of contributory fault is not complex in theory or in the presentation of evidence, if any.
3. Plaintiff must spend significant time in his case-in-chief educating the jury about the underlying issues related to the evolution, design, purpose, and medical need for / potential health repercussions of medical devices like Defendant's product at issue.
4. The trial procedure adopted by the Court in other cases was likely dependent upon various factors that were case specific. As an example, it is believed that one or more of those cases included a claim sounding in strict liability and/or a punitive damage claim. Each would, arguably, require additional attention of the defense. Such claims are not at issue here.

Respectfully Submitted,

MARTIN BAUGHMAN, PLLC

WM. KEITH DOZIER, LLC

/s/Ben C. Martin

Ben C. Martin (13052400 TX)
Laura J. Baughman (00791846 TX)
Kristi Wood (24076784 TX)
Thomas William Arbon (01284275 TX)
3141 Hood Street, Suite 600
Dallas, TX 75219
Telephone: (214) 716-6614
Facsimile: (214) 744-7590
Facsimile: (214) 744-7590
bmartin@martinbaughman.com
lbaughman@martinbaughman.com
kwood@martinbaughman.com
tarbon@martinbaughman.com
eservice@martinbaughman.com

and

/s/ Wm. Keith Dozier

Wm. Keith Dozier (OSB 012478)
keith@wkd-law.com
Wm. Keith Dozier, LLC
385 First St., Ste. 215
Lake Oswego, OR 97034
Telephone: (503) 594-0333
Fax: (510) 697-0841
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on May 3rd, 2021, a copy of the foregoing was filed with the Clerk of Court using the CM/ECF system, which will send notification to all counsel of record.

/s/ Ben C. Martin
Ben C. Martin